IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 81 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ARVINDBHAI SHANTILAL

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' under the provisions of sec. 256(1) of the Income-tax Act, 1961 :

"Whether the addition made by the ITO of the share of profit from the firm amounting to Rs. 32,648/and Rs. 28,119/- for assessment years 1978-79 and 1979-80 respectively made by the ITO in the assessee's income under section 64(1)(iii) of the I.T. Act, 1961 cannot be justified in law and on the facts of the case?"

2. Learned advocate Shri B.B. Naik has appeared for the revenue whereas nobody has appeared for the respondent assessee, though the respondent has been duly served.

3. Learned advocate Shri Naik appearing for the revenue has fairly submitted that for the earlier assessment year in the case of the assessee itself, a similar question was raised and the said question was answered by this Court in I.T.R. No. 214/84 on 27.3.87. Upon perusal of the judgment delivered in I.T.R. No.214/84, we find that this Court had answered a similar question for the earlier year in the affirmative i.e. in favour of the assessee and against the revenue.

4. It is also pertinent to note that while deciding the appeal, the Tribunal had also relied upon its earlier order which was subject-matter of I.T.R. No. 214/84.

5. We are in respectful agreement with the judgment delivered in I.T.R. No. 214/84 and therefore we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference is thus disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)